



Northern
California

January 11, 2019

Bay Area Rapid Transit (BART)
Public Records Request
c/o District Secretary
300 Lakeside Drive, 23rd Floor
Oakland, California 94612
records@bart.gov
Tel: (510) 464-6080

Via U.S. Mail and Email

RE: Request for Public Records Related to Oscar Grant's Death Now Subject to Disclosure Pursuant to S.B. 1421

To Whom It May Concern:

I write to respectfully request records related to the investigation and discipline of specific peace officers,¹ Johannes Mehserle, Tony Pirone and Marysol Domenici, employed by the Bay Area Rapid Transit (BART) (the "Department") under the California Public Records Act, Gov't Code §§ 6250 et seq., California Penal Code §§832.7-832.8, and Art. I, § 3(b) of the California Constitution, as set forth below. I also write to request disclosable records related to Oscar Grant's death on January 1, 2009.

Last fall, the California legislature passed, and Governor Brown enacted, SB 1421 (Skinner), which amends California Penal Code § 832.7 to provide the public a right of access to records related to investigations and discipline of peace officers for shootings and serious uses of force, as well as sustained findings of dishonesty related to the investigation, reporting, and prosecution of a crime or police misconduct. We now respectfully request some of the records newly available under SB 1421.

We make this request as the American Civil Liberties Union Foundation of Northern California, as requestor, on behalf of Cephus Johnson, Oscar Grant's uncle.

I. Requests for Records

¹ A peace officer is "employed by the Department" for purposes of these requests if that officer has been employed by the Department at any time. The modifying phrase "employed by the Department" does *not* limit the requests only to officers currently employed by the Department, nor does it exclude documents within the position of the Department that concern the incidents that occurred while the peace officer was employed by another agency.

American Civil Liberties Union Foundation of Northern California

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As set forth below, we seek all records² and documents relating to the underlying incident and officers.

For purposes of this request, records include, but are not limited to all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action. Cal. Penal Code §832.7(b)(2).

Records Request No. 1: All RECORDS AND DOCUMENTS related to the administrative investigation and any criminal investigation of **Oscar Grant's death on January 1, 2009**. *See* Penal Code § 832.7(b)(1)(A)(ii).

Records Request No. 2: For officers **Johannes Mehserle, Tony Pirone and Marysol Domenici**, All RECORDS AND DOCUMENTS relating to any incident in which such an officer was found to have committed an act of dishonesty directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence. *See* Penal Code § 832.7(b)(1)(C). Such incidents may also include receipt or solicitation of bribes, loans, favors, or gifts in relation to an investigation; misappropriation of property in an investigation, obstructing an investigation, or influencing a witness.

Records Request No. 3: For officers **Johannes Mehserle, Tony Pirone and Marysol Domenici**, All RECORDS AND DOCUMENTS related to any administrative or criminal investigation into the discharge of a firearm at a person by a peace officer that did not result in death. *See* Penal Code § 832.7(b)(1)(A)(i).

² The term "records" as used in this request is defined as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." Cal. Govt. Code § 6252, subsection (e). "Writing" is defined as "any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored." Cal. Govt. Code § 6252 (g).



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Records Request No. 4: For officers **Johannes Mehserle, Tony Pirone and Marysol Domenici**, All RECORDS AND DOCUMENTS related to any administrative or criminal investigation into a use of force by a peace officer that resulted in great bodily injury. *See* Penal Code § 832.7(b)(1)(A)(ii).

Records Request No. 5: For officers **Johannes Mehserle, Tony Pirone and Marysol Domenici**, all RECORDS AND DOCUMENTS related to any administrative or criminal investigation into any uses of force resulting in death in cases other than Oscar Grant's. *See* Penal Code § 832.7(b)(1)(A)(ii).

Records Request No. 6: For officers **Johannes Mehserle, Tony Pirone and Marysol Domenici**, All RECORDS AND DOCUMENTS relating to any incident in which an enforcement agency or oversight agency made a sustained finding that such an officer engaged in sexual assault involving a member of the public. *See* Penal Code § 832.7(b)(1)(B). For purposes of this request, "sexual assault" refers to the commission or attempted initiation of a sexual act with a member of the public by means of force, threat coercion, extortion, offer of leniency or other official favor, or under the color of authority, including unwanted or gratuitous sexual contact such as touching or groping. *See id.* § 832.7(b)(1)(B)(ii).

II. Request for Preservation of Documents

While we have asked for documents that are newly available pursuant to S.B. 1421, review of those documents will very likely reveal some incidents in which requestors or other members of the public would like additional detail, such as records of investigation, audio, video, expert reports and other documents excluded from the present request. We therefore request that you provide assurances that you will preserve all such documents, at least for a reasonable time after complying with the present set of document requests, to allow targeted requests for additional information on other cases.

III. Prioritization of Requests

We understand that this change in the law may result in a significant number of responsive documents, and that you may have received a number of requests for similar documents from other requestors. *We ask that you please prioritize this request, given that it is on behalf of a family member of someone killed by police seeking information on how their loved one died.* We recognize that the change in law in many instances may allow these family members access to this information for the first time, and for the first time provide answers about their losses, and urge you prioritize these disclosures.

Second, for our requests, prioritize in the order of requests, 1 through 6.

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Third, if for any reason some categories of documents responsive to a request are more readily disclosable and others more difficult — for example, if older records are in archival storage or stored in a different and harder-to-use system, or documents responsive to one request are not as easily categorized for disclosure and would require more time-intensive searching than another — please contact us to discuss the obstacles to prompt disclosure so that we can work out a timeline, process, or refined selection criteria for documents that are more difficult to find or produce.

Please respond to this request in ten days, either by providing the requested information or providing a written response setting forth the specific legal authority on which you rely in failing to disclose each requested record, or by specifying a date in the near future to respond to the request. See Cal. Gov't Code § 6255.

If any records requested above are available in electronic format, please provide them in an electronic format, as provided in Govt. Code § 6253.9. To assist with the prompt release of responsive material, we ask that you make records available to us as you locate them, rather than waiting until all responsive records have been collected and copied.

If you would like to discuss these requests, please feel free to call Alec Bahramipour at 415-621-2493 or Kathleen Guneratne at 415-293-6312. Otherwise, please send any correspondence or documents in electronic format via email to ABahramipour@aclunc.org, or correspondence or documents on CD-ROM or USB drive to:

SB 1421 Records
ATTN: Alec Bahramipour/Kathleen Guneratne
ACLU of Northern California
39 Drumm Street
San Francisco, CA 94111

Because this request is made by a non-profit organization with the intent to make this material accessible to an impacted family member and the public as promptly as possible, we request that you waive any fees. *See North Cty. Parents Ass'n v. Dep't of Ed.*, 23 Cal. App. 4th 144, 148 (1994); see Cal. Gov. Code §6253(e). However, should you be unable to do so, we will reimburse your agency for the “direct costs” of copying these records plus postage. If you anticipate these costs to exceed \$50.00, please notify us prior to making the copies.

Thank you in advance for providing the records we have requested. Please do not hesitate to contact us with any questions regarding this letter.

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AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Northern
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Best,



Kathleen Guneratne
Senior Staff Attorney
ACLU Foundation of Northern California

American Civil Liberties Union Foundation of Northern California

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